

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1386 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRASHANKER MANISHANKER

Versus

ISHWARBHAI C CLERK SURTI DASHAPORWAD VANIK GNATI PANCH TRUST

Appearance:

MR SN SHELAT for Petitioners
MR BA SURTI for Respondent No. 1
MRS KETTY A MEHTA for Respondent No. 3, 9

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendants-tenants (defendant no.2 being the illegal sub-tenant), who were sued by the respondents-plaintiffs landlords under the

provisions of the Bombay Rent Act for a decree of eviction on a number of grounds.

2. The first ground alleged by the landlords was that the first defendant (tenant) had illegally sublet the rented premises to defendant no.2. The second ground was that the tenant has acquired another suitable residence and the third ground was that the tenant was in arrears of rent for more than six months and is not ready and willing to pay the rent.

3. The trial court, after recording evidence and hearing the parties, recorded findings of fact to the effect that the first defendant-tenant was guilty of unlawful subletting within the meaning of section 13(1)(e) of the Rent Act, that the landlords had failed to establish that the first defendant-tenant had acquired another suitable residence, and also recorded a finding that although the tenant was in arrears of rent for more than six months, he was ready and willing to pay the rent. Thus, the trial court dismissed the suit of the landlords on the ground of alternative suitable residence and on the ground of arrears of rent, but decreed the suit on the ground of unlawful subletting within the meaning of section 13(1)(e) of the Rent Act.

4. The tenant, therefore, challenged the decree of eviction by filing an appeal. It is pertinent to note that the landlord had not filed any cross objections in the said appeal in respect of the findings recorded against the landlords viz. that the tenant had not acquired suitable residential accommodation, and that the tenant was ready and willing to pay the rent.

5. Thus, the only question before the lower appellate court was to decide the appeal of the tenant on the question of unlawful subletting.

6. The lower appellate court, after reappreciating the entire evidence on record, confirmed the findings of fact recorded by the trial court, and held that the first defendant-tenant was guilty of unlawful subletting in respect of the suit premises in favour of the defendant no.2. The lower appellate court, therefore, confirmed the decree of eviction passed by the trial court.

7. It is under these circumstances that the original defendants have preferred the present revision under section 29(2) of the Bombay Rent Act.

8. Before proceeding with the merits of the matter

it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

9. Only a few salient features require to be noted. It is pertinent to note that section 13(1)(e) was amended by Bombay Act 49 of 1959, whereby the original word "sublet" was replaced by the phrase "unlawfully sublet". This amendment came into force on 1st May 1959.

10. The lower appellate court has rightly noted that the controversy between the parties is not whether the first defendant has sublet the premises to the second defendant. The defendant no.1 conceded, and it is also the case of the second defendant that he was a sub-tenant in the suit premises. The controversy is only as regards the year in which the sub-tenancy was created. If the sub-tenancy was created before the aforesaid amendment came into force, the same could not be said to be "unlawful subletting", and therefore the sub-tenancy would not furnish a cause of action for a suit for eviction.

11. The lower appellate court has discussed the evidence on this aspect with considerable detail.

12. The lower appellate court has rightly found that Exhs.44 and 48 being postal envelopes addressed to the defendant no.2, do not establish the presence of the second defendant upon the suit property prior to 1959.

13. The lower appellate court has also rightly discarded Exh.48 being a certificate issued by one advocate Shri Chandravadan C. Thakore on the ground that the contents of the said certificate have not been

established as per the rules of evidence.

14. The lower appellate court has rightly refused to accept the case of the defendants that one of the Trustees of the plaintiff Trust viz. Shri Jagmohandas had given consent to the first defendant to sublet the suit premises to the second defendant. It requires to be noted that when the defendants' evidence was being recorded, when this defence was put forward, the said Trustee Jagmohandas was no longer alive.

15. However, the lower appellate court has correctly dealt with the crux of the matter by referring to Exh.30. Exh.30 is a certified copy of a compromise between the first defendant (original tenant) and Shri Jagmohandas Jaikishandas (as Trustee of the plaintiff Trust). This compromise was recorded in an earlier standard rent application preferred by the first defendant being Application No.408/65. It is pertinent to note that the compromise is dated 21st January 1967. The lower appellate court has rightly observed that if the second defendant was already a sub-tenant in the suit premises prior to 1959, it is most natural and indeed expected that his name would have been mentioned not only in the standard rent application, but also in the compromise. However, the name of the second defendant is conspicuously absent in the compromise recorded on 25th January 1967. Furthermore, the contents of Exh.30 not only record and declare the first defendant to be the tenant of the suit premises on a monthly rent of Rs.20/-, but also create a prohibition against the first defendant, whereby no-one except the real brothers of the first defendant would be permitted to use the suit property. The very fact that the first defendant entered into such a compromise, and permitted such a prohibition to be created against him on 25th January 1967, clearly establishes that the second defendant was not in possession of the suit premises on the said day. It obviously follows that he has been inducted as an unlawful sub-tenant subsequent to the date of the compromise.

17. The lower appellate court also took note of another extremely significant fact to the effect that the advocate Shri Laiwala, who was the advocate of the first defendant in the suit and in appeal, was also the advocate for the first defendant in the standard rent application, and the said advocate has also signed the consent terms at Exh.30. It is, therefore, significant that the presence of defendant no.2 on the premises as a lawful sub-tenant would not have escaped the attention of

the said advocate. In any case it was open to the said advocate to step into the witness box to explain the circumstances, or any exceptions accepted by the parties, when they entered into a compromise at Exh.30.

18. In the premises aforesaid the finding of the lower appellate court, confirming the finding of the trial court that the first defendant has unlawfully sublet the suit premises to the second defendant is a finding which is eminently justified and requires to be confirmed. There is, therefore, no substance in the present revision and the same is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

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